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Washington, D.C. 205543

August 23, 2010

DA 10-1591

In Reply Refer to:

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NAL/Acct No. MB200741410261

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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In re: WTCL(AM), Chattahoochee, Florida
Metz, Inc.
Facility ID: No. 37471
File No. BR-20040227AAD

Dear Mr. Nolan:

The Chief, Audio Division, has before him an April 18, 2007, Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) filed by Metz, Inc. (“Licensee”), licensee of Station WTCL(AM), Chattahoochee, Florida (“Station”). Licensee requests cancellation of a March 19, 2007, Notice of Apparent Liability for a Forfeiture (“NAL”)¹ in the amount of seven thousand dollars (\$7,000) for violation of Section 73.3539 of the Commission's Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”),² for Licensee’s failure to file a timely license renewal application for the Station and Licensee’s unauthorized operation of the Station after the license had expired. By this action, we cancel the *NAL* and admonish Licensee for violating Sections 73.3539 of the Rules and 301 of the Act.

Background. As noted in the *NAL*, the Station’s renewal application was due on October 1, 2003, four months prior to the February 1, 2004, license expiration date. According to Commission records, no such application was filed, and the Station's license expired on February 1, 2004. In response, Licensee filed the subject Request arguing that its violation of Sections 73.3539 of the Rules and 301 of the Act was not intentional, and that it is financially unable to pay the proposed forfeiture. Licensee asserts that these reasons warrant a cancellation of the assessed forfeiture.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Rules,⁴ and the Commission’s *Forfeiture Policy Statement*.⁵ In

¹*Metz, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5327 (MB 2007).

² 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

³ 47 U.S.C. § 503(b).

assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

Licensee first asserts that these violations were unintentional. Specifically, Licensee President Donald Metz states that he and his parents, Harold and Betty Metz, own and operate the Station. Mr. Metz asserts that the Station's mailing address changed, but because the Commission was not notified of this new address, Licensee did not receive the postcard reminder of the deadline for filing the renewal of license until the license had already expired.⁷ As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.⁸ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.⁹ Accordingly, we will not consider this argument further.

Licensee next asserts that that the Station has had a long history of operating losses and also suffered a nearly catastrophic lightning strike to its transmitting facilities in 2001.¹⁰ Donald Metz explains that after rebuilding the Station exhausted his family's resources in 2001, and the family's other business closed, his parents filed for bankruptcy. Licensee claims that payment of a \$7,000 forfeiture would cause a "great financial hardship."¹¹ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the party's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹²

⁴ 47 C.F.R. § 1.80.

⁵ The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ Request at 2.

⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), recon. denied, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

⁹ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387.

¹⁰ Request at 2.

¹¹ *Id.* at 3.

¹² See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004).

In general, a licensee's gross revenues (or in the case of a sole proprietorship, gross income)¹³ are the best indicator of its ability to pay a forfeiture.¹⁴ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹⁵ In support of its Request, Licensee submits copies of the Station's 2002, 2003, and 2004 federal income tax returns, specifying gross revenues in the amounts of \$12,244, \$9,151, and \$10,518, respectively.¹⁶ Licensee also submits a copy of Harold and Betty Metz's bankruptcy filing.¹⁷

We have examined Licensee's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Licensee willfully violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended. However, after reviewing Licensee's claim and the supporting documentation, we believe that payment of the \$7,000 forfeiture, or any reduction thereof consistent with Commission precedent,¹⁸ would pose a financial hardship in view of Licensee's documented gross income. Accordingly, we cancel the proposed forfeiture.¹⁹ Nevertheless, we find that it is appropriate to admonish Licensee for its willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Conclusion. In view of the foregoing, the Notice of Apparent Liability (NAL/Acct. No. MB200741410261) for violation of Sections 73.3539 of the Rules and 301 of the Act is hereby CANCELLED. Licensee is instead hereby ADMONISHED for its willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

¹³ See *William Saunders*, Memorandum Opinion and Order, 21 FCC Rcd 1028, 1030 (EB 2006) (financial documentation, including personal tax returns, considered to determine inability to pay when antenna structure was operated as a sole proprietorship); *Maria L. Salazar*, Memorandum Opinion and Order, 19 FCC Rcd 5050, 5052 (2004) (federal individual tax returns of licensee of radio station considered to determine licensee's ability to pay forfeiture).

¹⁴ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

¹⁵ *Id.*

¹⁶ Request Exhibit B.

¹⁷ Request Exhibit C.

¹⁸ *Grace Baptist Church*, Forfeiture Order, DA 10-1072 (MB rel. June 15, 2010) (forfeiture reduced from 11.4 percent of licensee's average total revenue to 5 percent based on licensee's ability to pay); *Care Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010) (forfeiture reduced from 11 percent of licensee's average total revenue to 5 percent based on licensee's ability to pay).

¹⁹ *Mr. Richard Marburger*, Letter, 24 FCC Rcd 13622 (MB 2009) (forfeiture cancelled because of licensee's inability to pay); *M. Scott Johnson, Esq.*, Letter, 24 FCC Rcd 11292 (MB 2009) (same); *Henry A. Solomon, Esq.*, Letter, 24 FCC Rcd 5505 (MB 2009) (same).